

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Sl. No. 11)

O.A. No. 167 of 2022

Hony Lt Mahendra Nath Yadav
By Legal Practitioner for the Applicant : Shri Vinay Pandey, Advocate

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents : Shri RC Shukla, Advocate

Respondents

Notes of the Registry	Orders of the Tribunal
	<div><div><div><div>28.08.2024</div><div>Hon’ble Mr. Justice Anil Kumar, Member (J)</div><div>Hon’ble Vice Admiral Atul Kumar Jain, Member (A)</div></div><div><div>1. On the case being taken up for hearing Shri Vinay Pandey, Ld. Counsel for the applicant is present before the Court and Shri RC Shukla, Ld. Counsel for the respondents is present through video conferencing.</div><div>2. Heard the Id. counsel for the parties and perused the records.</div><div>3. Original application is disposed of with direction.</div><div>4. Detailed order on separate sheets.</div></div><div><div>(Vice Admiral Atul Kumar Jain) Member (A)</div><div>(Justice Anil Kumar) Member (J)</div></div><div>RK/-</div></div></div>

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Sl. No.12)

O.A. No. 693 of 2023 with M.A. No. 839 of 2023

Smt. Asha Rawat W/o Late Jeet Singh

Applicant

By Legal Practitioner for the Applicant : Shri Virat Anand Singh, Advocate
Shri Narendra Kumar Mishra, Advocate

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents : Shri Amit Jaiswal, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>28.08.2024</u> <u>Hon’ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon’ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. On the case being taken up for hearing Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents are present.</p> <p>2. Heard the ld. counsel for the parties and perused the records.</p> <p>3. This Original application has been filed for grant of disability pension from the date of invalid out of applicant’s husband i.e. 21.03.1979 to the date of his death i.e. 12.09.2012. Ld. counsel for the applicant submitted that the applicant’s husband was enrolled in the Indian Army on 28.01.1978 and was invalided out from service in Low Medical Category EEE on 21.03.1979. The claim for disability pension was submitted to PCDA (Pension) Allahabad through CMP Records which was rejected vide order dated 28.07.1979on the ground that the invaliding disability was neither attributable to nor aggravated (NANA) by service. The appealspreferred by the applicant for disability pension have been rejected by the respondents. Ld. counsel for the applicant further stated that the PCDA has no right to deny the claims.</p> <p>4. Ld. counsel for the applicant further submitted that delay in filing of the application is not deliberate but of the reasons stated in affidavit filed in support of delay condonation application. Moreover, it is a pensionary matter which is a recurring cause of action.</p> <p>5. As reported by the Registry, there is delay of 41 years 08 months and 25 days in filing this original application. Delay condonation application has been filed by the applicant which has been registered as M.A No. 839 of 2023.</p> <p>6. Ld. counsel for the respondents has filed objection on delay condonation application of the applicant on the ground that delay of more than 41 years has not been explained.He stated that there is no reasonable/ sufficient cause shown by the application to condone the delay.</p>

	<p>7. Ld. counsel for the respondents relied upon the judgement passed by the Hon'ble Apex Court in the case of Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157 wherein it has been held that –</p> <p><i>“ the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”</i></p> <p>8. In this case, the applicant's husband was invalided out from service on 21.03.1979 and the application for disability pension was rejected on 28.07.1979, therefore, the cause of action arose in the year 1979 and the applicant could not file an application within limitation.</p> <p>9. Perusal of the file also reveals that the husband of the applicant was invalided out from service in March 1979 and died in Sep 2012 but neither the husband of the applicant during his life time nor the applicant after the death of her husband has challenged the rejection order of the respondents for grant of disability pension. However, the applicant preferred to sleep over the matter for more than 41 long years, allegedly kept on waiting for a decision on his representations. It is well settled that if a person is not vigilant about his right by not approaching the court against the adverse order, then the court cannot help him by entertaining the petition after a long delay. In the case of Union of India versus Harnam Singh (1993)(2) S.C.C. Page 162), the Hon'ble Apex Court has held that</p> <p><i>“the Law of Limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to aid of those who sleep over their rights and allow the period of limitation to expire”.</i></p> <p>10. Moreover, the applicant has failed to explain the inordinate delay in filing the O.A, to the satisfaction of this Court. Though an application has been moved for condonation of delay, but it does not contain any ground, whatsoever, to justify the delay in filing the O.A., and merely waiting for a decision on a representation for years together is no ground at all for condoning the delay. In the case of Bhup Singh versus Union of India &Ors, (1992 A.I.R. S.C. Page 1414), it has been held that the delay and laches must be explained to the satisfaction of the Court for seeking condonation of delay.</p> <p>11. Hon'ble Apex Court in the case of Union of India &Ors. Versus M.K. Sarkar (2010(2) S.C.C. Page 58), has held that limitation has to be counted from the date of original cause of action.</p> <p>12. In view of the above laws laid down by the Hon'ble Supreme Court, that if the O.A is not filed within six months from the date of cause of action, then application for condonation of delay, as provided under Section 22 of Armed</p>
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	<p>Forces Tribunal, Act 2007 is required to be filed, explaining cogent reasons, for not approaching the court within prescribed period, which has not been done in this case to explain the inordinate delay of more than 41 years, in filing the O.A.</p> <p>13. In view of the above, delay condonation applicant is rejected being devoid of merit. M.A No. 839 of 2023 is dismissed accordingly.</p> <p>14. Original application also stands dismissed at the admission stage itself.</p> <p>15. No order as to costs.</p> <p>(Vice Admiral Atul Kumar Jain) Member (A)</p> <p>(Justice Anil Kumar) Member (J)</p> <p>RK/-</p>
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